

APPEAL NO. 040057  
FILED FEBRUARY 25, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 9, 2003. The hearing officer resolved the disputed issue by deciding that the compensable injury of \_\_\_\_\_, includes an injury to L5-S1. The appellant (self-insured) appealed, disputing the determination. Respondent 1 (claimant) responded, urging affirmance of the disputed determination and requested a correction of the date included in Conclusion of Law No. 4. The claimant additionally argued in his response that the real issue in this case is what medical treatment the claimant is entitled to obtain. A response was also filed by respondent 2 (subclaimant) urging affirmance and requesting correction of the date included in Conclusion of Law No. 4.

DECISION

Affirmed as reformed.

The stated issue in the instant case was: Does the compensable injury of \_\_\_\_\_, include an injury to the L5-S1 of the lumbar spine? The parties stipulated that the carrier accepted liability for the \_\_\_\_\_, injury to the claimant. However, it was the carrier's position that any injury to the L5-S1 was not related to the compensable injury but rather a reoccurrence of the claimant's previous problems from the 1980's. In view of the record, we disagree with the claimant's position that the true issue is what medical treatment the claimant is entitled to obtain rather than the extent of injury.

Extent of injury is a question of fact. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. The claimant's surgeon opined that the claimant's medical condition up to and leading to his surgery was a result of the work-related injury of \_\_\_\_\_. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing

officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). The carrier essentially makes the same factual arguments on appeal that it made at the hearing. Applying the standard of review outlined above, we find no reversible error.

Conclusion of Law No. 4 is reformed to correct the date listed to \_\_\_\_\_. As noted by both the claimant and subclaimant in their respective responses no injury occurred or was alleged to have occurred on February 2, 2002. The evidence as well as the hearing officer's Finding of Fact No. 9, reflect that the incident at work, the compensable injury, occurred on \_\_\_\_\_, not February 2, 2002.

We affirm the decision and order of the hearing officer as reformed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**CITY SECRETARY  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

\_\_\_\_\_  
Margaret L. Turner  
Appeals Judge

CONCUR:

\_\_\_\_\_  
Chris Cowan  
Appeals Judge

\_\_\_\_\_  
Edward Vilano  
Appeals Judge